

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-1301

GAYLE MARCKS

APPELLANT

V.

TOM MARCKS

APPELLEE

Opinion Delivered June 17, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. DR2006-3870]

HONORABLE MARY MCGOWAN,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Gayle Marcks argues that the trial court erred in granting appellee Tom Marcks unsupervised visitation with the parties' minor children. As to this claim, after a de novo review of the record, we find no error and affirm the decision of the trial court. Ms. Marcks also argues that the trial court erred by 1) failing to require that her husband amend his 2006 tax returns; 2) failing to award part of Mr. Marcks's bonus as marital property; 3) finding that certain gold, silver, platinum, and a \$1000 bill were pre-marital property; 4) failing to find Mr. Marcks in contempt; and 5) failing to require that he maintain a life-insurance policy in his children's names. However, these points were first raised in her August 21, 2008, motion for reconsideration, which was "deemed denied" thirty days after it was filed. No subsequent notice of appeal was filed with our court. Because she failed to

amend her notice of appeal to reflect the issues outlined in her motion for reconsideration, we are unable to address them on appeal. *See Rose Care, Inc. v. Ross*, 91 Ark. App. 187, 209 S.W.3d 393 (2005).

As to the question of unsupervised visitation, although we review the case de novo, we will not reverse unless it is shown that the trial court's decision was clearly erroneous or against the preponderance of the evidence. *Johns v. Johns*, 53 Ark. App. 90, 93, 918 S.W.2d 728, 730 (1996). Further, we give special deference to the trial court's fact finding in child-custody matters because of its superior position to evaluate the evidence and assess the credibility of witnesses. *Id.* Finally, the paramount concern in child-custody law is the welfare and best interest of the child; all other considerations are secondary. *Id.*

Ms. Marcks argues that there was substantial evidence in the record to show that the parties' two minor children (both girls) had been victims of emotional and physical abuse at the hands of their father; that they were scared of their father; and that they felt hopeless and intimidated by his behavior toward them. However, in support of the trial court's decision, there was the testimony of Cora Wilson, the DHS case worker assigned to the girls' case. She testified that she did not feel that Mr. Marcks was physically mistreating the children, despite the fact that there were allegations of physical abuse. She also noted that the girls had maintained satisfactory grades and that there "was nothing from the school or the school authorities that told [her that] these children were being emotionally maltreated." She noted that the only person, other than the girls, who had concerns of emotional maltreatment "was Lesa Doan."

The record reflects that Doan is a child counselor, who had strong, unfavorable opinions about Mr. Marcks. However, the trial court noted—in relation to the comments of Doan—that Doan had spent a disproportionate amount of time in independent counseling with the girls, as opposed to joint counseling with their father. Based on this finding and the evidence presented by Wilson, the trial court awarded Mr. Marcks unsupervised visitation with his minor children. Because the trial court’s decision is not clearly erroneous or contrary to a preponderance of the evidence, we affirm it.

Affirmed.

KINARD and BROWN, JJ., agree.